Leland Stanford Junior University *and* Service Employees Local No. 715, Service Employees International Union, AFL-CIO. Case 32-CA-3288

June 11, 1982

DECISION AND ORDER

BY MEMBERS FANNING, JENKINS, AND ZIMMERMAN

On January 21, 1982, Administrative Law Judge Jerrold H. Shapiro issued the attached Decision in this proceeding. Thereafter, Respondent filed partial exceptions and a supporting brief.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the record and the attached Decision in light of the exceptions and brief and has decided to affirm the rulings, findings,[1] and conclusions of the Administrative Law Judge and to adopt his recommended Order, as modified.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the recommended Order of the Administrative Law Judge, as modified below, and hereby orders that the Respondent, Leland Stanford Junior University, Stanford, California, its officers, agents, successors, and assigns, shall take the action set forth in said recommended Order, as so modified:

1. Substitute the following for paragraph 2(b):

"(b) Furnish, upon request, to the above-named Union all of the information about temporary employees, contractors, and subcontractors sought by the Union in its letter to Respondent dated October 8, 1980, except the addresses of temporary employees."

2. Substitute the attached notice for that of the Administrative Law Judge.

[1] For the reasons stated by the Administrative Law Judge, we find that the names, classifications, and dates of employment of Respondent's employees classified as temporary employees who were performing bargaining unit work are relevant to the Union's collective-bargaining responsibilities and that Respondent violated Sec. 8(a)(5) and (1) of the Act by refusing to provide such information upon request. We find, however, that the Union has not met its burden of establishing the relevance of the addresses of these temporary employees to its collective-bargaining responsibilities and therefore we delete from the Order and notice any requirement that Respondent shall, upon request, provide the Union with this information.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

WE WILL NOT refuse to bargain collectively with Service Employees Local No. 715, Service Employees International Union, AFL-CIO, by refusing to supply relevant information upon request.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of their rights guaranteed them by Section 7 of the Act.

WE WILL, upon request, furnish the above-named Union with the names, classification titles, and current job descriptions of each life science research assistant in our employ.

WE WILL, upon request, furnish the above-named Union all of the information about the temporary employees, contractors, and subcontractors sought by the Union in its letter to us dated October 8, 1980, except the addresses of temporary employees.

WE WILL, upon request, furnish the above-named Union the information sought in the 111 status letters sent to us by the Union between November 1980 and August 15, 1981.

LELAND STANFORD JUNIOR UNIVERSITY

DECISION

STATEMENT OF THE CASE

JERROLD H. SHAPIRO, Administrative Law Judge: The hearing in this case which was held on August 18, 1981, is based upon unfair labor practice charges filed on December 24, 1980, by Service Employees Local 715, Service Employees International Union, AFL-CIO, herein called the Union, and a complaint issued on February 18, 1981, on behalf of the General Counsel of the National Labor Relations Board, Region 32, alleging that Leland Stanford Junior University, herein called Respondent, has engaged in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the National Labor Relations Act, herein called the Act, by refusing to furnish the Union with information necessary and relevant to the performance of the Union's collective-bargaining function. Respondent filed an answer denying the commission of the alleged unfair labor practices.[1]

[1] In its answer Respondent admits that the Union is a labor organization within the meaning of Sec. 2(5) of the Act. Respondent also admits that Respondent is an employer engaged in commerce within the meaning of Sec. 2(6) and (7) of the Act and meets one of the applicable discretionary jurisdictional standards imposed by the Board.

Upon the entire record, from my observation of the demeanor of the witnesses, and having considered the General Counsel's and Respondent's briefs, I make the following:

FINDINGS OF FACT

I. THE ALLEGED UNFAIR LABOR PRACTICES

A. *Background*

Respondent is an educational institution. The Union represents a unit of between approximately 1,300 and 1,400 of Respondent's employees. The current collective-bargaining agreement between the Union and Respondent covering these employees, which was in effect during the time material herein, is effective from September 1, 1979, until August 3, 1982. The contractual representation clause, article I, in pertinent part reads as follows:

ARTICLE I: REPRESENTATION

A. RECOGNITION AND COVERAGE

1. Unit

In accordance with the certification of the National Labor Relations Board (NLRB) in Case No. 20-RC-11266, the University recognizes the Union as the exclusive representative for purposes of collective bargaining concerning wages, hours and working conditions for the following unit found appropriate by the NLRB:

> All regular staff maintenance employees, laboratory support personnel, custodians, food service employees, audiovisual operatory, nonexempt computer operations personnel, production control clerks and tape librarians employed by the Stanford Center for Information Processing (SCIP), book preservers and all regular staff book warehouse assistants and proofreaders of the Standford University Press all employed by the University in Northern California; EXCLUDING: All other employees, office clerical employees; all employees of Standford University Hospital; patient care employees; shelvers; computer production control clerks other than in SCIP, computer production control coordinators and operations specialists; programmers, scientific and engineering associates; all currently represented employees; guards, supervisors, professional and confidential employees as defined in the Act.

2. Regular Staff

The term "regular staff" includes only employees in positions requiring at least twenty (20) hours work per week for a period actually lasting at least four (4) months.

* * * * *

4. Workers

> All employees within the bargaining unit shall be called "workers" in this Agreement and its appendices.

All of the unit employees pursuant to the terms of a lawful union-security clause are required to either join the Union or pay a service fee equal to membership dues.

The contract contains a grievance procedure culminating in binding impartial arbitration. The contractual grievance procedure defines a grievance which is subject to said procedure as a "claim" against Respondent concerning a unit employee's or employees' "wages, hours, working conditions, or any other conditions of employment or representation and involving the interpretation or application of this Agreement."

The contract contains a provision, subsection "G" of article I, pertaining to Respondent's obligation to furnish information to the Union. This provision reads as follows:

G. DATA

1. Monthly Data

> The University shall in good faith attempt to provide monthly to the Union the following data for each worker:
>
> a. Social Security number (or other employee identification number if available)
>
> b. Name
> c. Mailing address with Zip Code
> d. Department or group
> e. Bin or route code
> f. Birthdate
> g. Sex
> h. Ethnic designation
> i. Date of hire
> j. Current job class code
> k. Percent time
> l. Base Pay
> m. Basic health plan
> n. Retirement Plan

2. Additional Data

> The Union may request additional data which the University shall provide to the extent relevant and necessary to the Union's representation responsibilities under this Agreement provided that the University may charge a reasonable fee for requests which require extraordinary processing or staff time. Except in the case of an individual or Union grievance, all requests for additional data by Union must be in writing by the Union President and directed to the Director of Personnel.

The contract contains a provision, subsection "B" of article II, entitled "Work Preservation" which reads as follows:

B. WORK PRESERVATION

1. Contracting

a. At the University

In case the University contracts to have work regularly and customarily performed by workers, performed by a contractor on University operated premises, and where layoff of workers would directly result, the University will provide by contract that the contractor is obligated to offer employment at substantially equivalent wages to the workers laid off to the extent that the work created for the contractor by the contract is work which the workers laid off possess the ability to perform without additional training; provided that the contractor shall be permitted to determine the required staffing levels.

b. Other

In all other cases in which the University contracts to have work regularly and customarily performed by workers performed by a contractor, and where layoffs of workers will directly result, the University shall notify the Union no less than 120 days before the layoff is to take effect. The University shall thereafter, upon request, meet and bargain concerning the effects of the decision upon the unit.

c. Layoff Rights

Any worker laid off from University employment in accordance with the preceding paragraphs and Article IX shall retain the reemployment and severance rights as provided in Article III and Article IX whether or not the worker is employed by the contractor.

2. Work by Individuals Not in the Bargaining Unit

Work regularly and customarily performed by workers shall not be performed by individuals not in the bargaining unit to the extent that it directly results in a worker's layoff or removal to a lower classification. If any such incident occurs the worker shall be compensated for any loss in regular pay.

Article X of the contract entitled "Management Function" reads in pertinent part as follows:

Except as otherwise provided in this Agreement, nothing in this Agreement shall be deemed to limit the University in any way in the exercise of regular and customary functions of management including, but not limited to, the following:

* * * * *

C. The right to determine the need for and identity of suppliers, contractors, and subcontractors;

* * * * *

E. The expansion or contraction of University services generally or any department, activity or function specifically and the determination of appropriate staffing levels within the bargaining determination of appropriate staffing levels within the bargaining unit generally or any department, activity or function specifically;

F. The direction of the working forces, including the right to determine work, shift and duty assignments and to determine whether or not particular assignments are to be performed by workers. . . .

During the fall and winter of 1980,[2] the Union at various times requested that Respondent furnish it with different types of information which the Union in effect informed Respondent was relevant to the performance of its collective-bargaining function. Almost all of the information concerned employees who were not represented by the Union, nonunit employees. The question presented for decision is whether Respondent was obligated to furnish some or all of the aforesaid information to the Union and, if so, whether Respondent satisfied its obligation. Initially, I shall set out the legal principles which generally govern an employer's obligation under the Act to furnish information to a labor organization which represents its employees. I shall then set out and evaluate the evidence pertinent to the Union's several requests for information and determine whether or not Respondent was obligated to furnish said information and, if so, whether it has fulfilled its statutory obligation.

B. *Applicable Principles*

An employer has an obligation under Section 8(a)(5) and (1) of the Act to furnish a union that represents his employees with requested information which is relevant to the union's proper performance of its collective-bargaining responsibilities. *Detroit Edison Co.* v. *N.L.R.B.*, 440 U.S. 301, 303 (1979); *N.L.R.B.* v. *Acme Industrial Co.*, 385 U.S. 432, 435–436 (1967); *N.L.R.B.* v. *Truitt Mfg. Co.*, 351 U.S. 149, 151–154 (1956); *San Diego Newspaper Guild, Local No. 95* v. *N.L.R.B.*, 548 F.2d 863, 866–867 (9th Cir. 1977). The employer's obligation applies with equal force to information which is relevant to the union's responsibility to administer and enforce provisions of existing collective-bargaining contracts and information which is relevant to the union's responsibility to formulate and negotiate about proposals for new collective-bargaining contracts. *Local 13, Detroit Newspaper Printing & Graphics Communications Union* v. *N.L.R.B.*, 598 F.2d 267, 271, fn. 4 (D.C. Cir. 1979); *Lodge 743 & 1746 International Association of Machinists & Aerospace Workers* v. *United Aircraft Corp.*, 534 F.2d 422, 458, fn. 62 (2d Cir. 1975), cert. denied 429 U.S. 825, and cases there cited; *Curtiss-Wright Corporation, Wright Aeronautical Division* v. *N.L.R.B.*, 347 F.2d 61, 68 (3d Cir. 1965). As long as the information is relevant to the union's collective-bargaining responsibilities when viewed in light of all the circimstances of the case, the employer's refusal to furnish it constitutes a violation of Section 8(a)(5)

[2] All dates herein unless otherwise specified refer to the year 1980.

and (1) regardless of his good or bad faith. *Puerto Rico Telephone Company* v. *N.L.R.B.*, 359 F.2d 983, 986 (1st Cir. 1966); *Curtiss-Wright Corporation Wright Aeronautical Division* v. *N.L.R.B., supra*, 347 F.2d at 67–69, and cases there cited; *J. I. Case Co.* v. *N.L.R.B.*, 253 F.2d 149, 152–153 (7th Cir. 1958), and cases there cited. See also *Emeryville Research Center, Shell Development Co.* v. *N.L.R.B.*, 441 F.2d 880, 886–887 (9th Cir. 1971); *N.L.R.B.* v. *Benne Katz, et al., d/b/a Williamsburg Steel Products Company*, 369 U.S. 736, 742–743 (1962).

In determining whether the information is relevant, I need only find a "probability that the desired information [is] relevant, and that it would be of use to the union in carrying out its statutory duties and responsibilities." *N.L.R.B.* v. *Acme Industrial Co., supra*, 385 U.S. at 437. Accord: *San Diego Newspaper Guild, Local No. 95* v. *N.L.R.B., supra*, 548 F.2d at 867. "A broad disclosure rule is crucial to full development of the role of collective-bargaining under the Act," for "[u]nless each side has access to information enabling it to discuss intelligently and deal meaningfully with bargainable issues, effective negotiation cannot occur." *Local 13, Detroit Newspaper Printing & Graphic Communications Union* v. *N.L.R.B., supra*, 598 F.2d at 271. Accord: *San Diego Newspaper Guild, Local No. 95* v. *N.L.R.B., supra*, 548 F.2d at 866–867. Accordingly, the standard for determining whether the information is relevant to the union's bargaining responsibilities—a standard applicable with equal force to information which is requested to enable the union to enforce existing bargaining contract provisions and to information which is requested to enable the union to negotiate new bargaining contract provisions—"is a liberal one, much akin to that applied in discovery proceedings." *Local 13, Detroit Newspaper Printing & Graphic Communications Union* v. *N.L.R.B., supra.* Accord: *N.L.R.B.* v. *Acme Industrial Co., supra, San Diego Newspaper Guild, Local No. 95* v. *N.L.R.B., supra*, 548 F.2d at 867. "Under the Federal Rules of Civil Procedure governing discovery, 'relevancy is synonymous with "germane",' and a party must disclose information if it has any bearing on the subject matter of the case." *Local 13, Detroit Newspaper & Printing & Graphic Communications Union* v. *N.L.R.B., supra.* Accord: *N.L.R.B.* v. *Acme Industrial Co., supra.*

The burden of proving that the standard of relevance is or is not met shifts according to the nature of the information. Information about bargaining unit personnel such as wage data is "so intrinsic to the core of the employer-employee relationship" that it is "considered presumptively relevant" and "the employer has the burden to prove a lack of relevance." *San Diego Newspaper Guild, Local No. 95* v. *N.L.R.B., supra*, 598 F.2d at 271, fn. 5, and cases there cited. Information about nonbargaining unit personnel is considered "not ordinarily pertinent to [the union's] performance as a bargaining representative" and the union has the burden to prove that the information "is relevant to bargainable issues . . . because of peculiar circumstances." *San Diego Newspaper Guild, Local No. 95* v. *N.L.R.B., supra*, 548 F.2d at 867–868 (emphasis deleted). Accord: *Local 13, Detroit Newspaper Printing & Graphic Communication Union* v. *N.L.R.B., supra*, and cases there cited. While the burden proving relevance shifts from the employer in cases involving unit information to the union in cases involving nonunit information, "the ultimate standard of relevancy is the same in all cases," and information considered not ordinarily relevant may be proved in a particular case to have "an even more fundamental relevance than that considered presumptively relevant." *Prudential Insurance Co.* v. *N.L.R.B.*, 412 F.2d 77, 84 (2d Cir. 1969), cert. denied 396 U.S. 928. Accord: *Local 13, Detroit Newspaper Printing & Graphic Communications Union* v. *N.L.R.B., supra; Curtiss-Wright Corp., Wright Aeronautical Div.* v. *N.L.R.B., supra*, 347 F.2d at 69.

Although the union has the burden of proving the relevance of nonunit information, that burden is not exceptionally heavy. As the court stated in *San Diego Newspaper Guild, Local No. 95* v. *N.L.R.B., supra*, 548 F.2d at 868–869 (emphasis supplied):

> When [a] union asks for information which is not presumptively relevant, the showing by the union must be more than a mere concoction of some general theory which explains how the information would be useful to the union . . . . To hold otherwise would be to give the union unlimited access to any and all data which the employer has. Conversely, however, to require *an initial, burdensome showing* by the union before it can gain access to information which is necessary for it . . . defeats the very purpose of the "liberal discovery standard" of relevance which is to be used. Balancing those two conflicting propositions, the solution is to require *some initial, but not overwhelming demonstrations* by the union . . . .

The determination of relevance "depends on the factual circumstances of each particular case." *San Diego Newspaper Guild, Local No. 95* v. *N.L.R.B., supra*, 548 F.2d at 867. Accord: *Local 13, Detroit Newspaper Printing & Graphic Communications Union* v. *N.L.R.B., supra*, 598 F.2d at 272.

C. The Union Requests Respondent To Furnish the Number of Persons Working as Temporary Glassware Washers in the Department of Medicine, their Names, Dates of Hire, and Periods of Employment

1. The evidence

Charlene Young was employed by Respondent in its department of medicine as a regular part-time glassware washer. She was a member of the bargaining unit, represented by the Union. Respondent also employs employees classified as temporary employees who are not a part of the unit represented by the Union, even though they perform unit work.

In 1980 Young was absent from work for medical reasons for several consecutive weeks and eventually, in early August, requested a 5-month leave of absence. Respondent's representatives denied this request and indicated that Respondent intended to fill her position with another regular part-time employee. On August 20 Respondent's representatives, Jon Erickson and Linda Farwell, discussed the matter with Union Representative

Mary Ann Tenuto and agreed to reconsider Young's request.

On August 29 Farwell, who is an administrative assistant in the department of medicine, wrote Tenuto and Young that Respondent had decided to proceed with its original plan to hire a permanent part-time employee to fill Young's position, rather than a temporary employee. Farwell's letter explained Respondent's decision not to employ a temporary employee:

> This decision is based on the fact that the Glassware Washing Pool is significantly handicapped by the search for and employment of temporary people. It has been our experience these past five months that it is difficult to locate people who are interested in anything less than a permanent position. [This is a reference to the 5-month period during which Young had thus far been out of work.]
>
> As you can understand from your glassware washing experience, this situation seriously impairs the effective operation of the pool. Since so much time is spent searching for employees and training them adequately, the regular glassware washers are burdened with additional workloads. They are also put in the position of repeating the assignments of those temporaries whose work is unacceptable or incomplete.

In response, on September 8, Tenuto wrote Erickson, who is the department of medicine's business manager, as follows:

> On August 20, 1980, Carlene [sic] Young and I met with you and Linda Farwell to discuss your denial of her request for medical leave without pay. At that meeting you stated that your reason for denying the leave was due to the unreliability of temporary help and the difficulty obtaining such help. You also stated that a fixed term appointment had not been considered and that you would reconsider your decision in light of this request.
>
> * * * * *
>
> Ms. Young has since received Linda Farwell's letter reiterating the denial of her request for leave. A grievance is being filed.
>
> In view of your reason for denial of leave, I requested information on the number of individuals working as temporary Glassware Washers on August 20, 1980 for the Department of Medecine [sic]. You have not provided me with that information. Please be advised that federal law requires that you provide such information. Therefore, I am making my second request for information on the number of individuals working as temporary Glassware Washers for the Department of Medecine [sic].

As indicated in Tenuto's September 8 letter, Young on that date filed a grievance pursuant to the governing collective-bargaining agreement alleging that Rexpondent's refusal to grant her disability leave without pay from August through December was arbitrary and capricious.

On September 12, in response to Tenuto's request for the number of temporary glassware washers employed in the department of medicine as of August 20, Assistant Personnel Director Bernard Lighthouse wrote Tenuto as follows:

> I find it difficult to understand why you would need this information, or even if it were easily obtainable information, how valuable this information would be. The Department of Medicine is quite large with many sub divisions and a number of temporary workers are employed. Some of the work is sporatic due to individual preference, availability and need. The absolute number has no relationship to availability, for example. At the same time we are already on record in correspondence to Ms. Young from her supervisor Linda Farwell that attempts to fill her job with temporary workers proved unsatisfactory during her protracted unavailability. The Department has already informed you, then, that we have employed temporary help, and I can once again affirm that this was the case.
>
> Please let me know if this response is not sufficient for your needs. Please keep in mind that information from our temporary hourly payroll is difficult to obtain and Centralized Departmental records on such information nonexistent.

On August 13 Tenuto wrote Employee Relations Manager Felix Barthelemy acknowledging receipt of Lighthouse's September 12 letter and renewed her request for the number of individuals who were working as temporary glassware washers in the department of medicine, but now expanded the request to encompass the months of August and September, the names of the persons involved, their dates of hire, and the duration of their employment as well as any interruptions in their employment. Respondent did not answer this letter.

In March 1981 Young's grievance, which was scheduled to be heard by an arbitrator in April 1981, was withdrawn by the Union. Tenuto testified that one of the reasons for the withdrawal of the grievance was Respondent's failure to furnish the aforesaid information about the temporary employees and because Young's medical condition was such that she was unable to resume work.

Tenuto testified that the reason she requested the number of temporary glassware washers employed by Respondent in its department of medicine was that Respondent's refusal to employ a temporary employee in Young's place, to allow Young to take a medical leave of absence, "could have been arbitrary and [Tenuto] wanted to find out if in fact it was possible to hire temporaries to work as glassware washers, and show that could have been done."

2. Discussion and ultimate findings

The information sought by the Union, the number of temporary glassware washers employed in the department of medicine, is not presumptively relevant for col-

lective-bargaining purposes because the information is about nonbargaining unit personnel. The Union contends that this information was relevant to its processing of Young's grievance because it would have enabled the Union to determine whether Respondent was able to employ a temporary employee, rather than a permanent employee, to fill Young's position. In other words the Union's request for information herein assumes that Respondent's reason for refusing to fill Young's position with a temporary employee, thereby enabling Young to take medical leave of absence, was the unavailability of such employees. Initially, in August Respondent indicated that its decision to use a permanent employee rather than a temporary employee to fill Young's position was caused in part by the difficulty of obtaining such help. But thereafter, in response to Young's grievance and the Union's request for the information, Respondent, through Lighthouse's letter of September 12, conceded to the Union that there were temporary workers available to fill Young's position and that it was not a question of the unavailability of temporary employees which caused it to replace Young with permanent worker, but Respondent had concluded that it was too inefficient to continue filling Young's vacancy with temporary employees as it had been doing for the past several months. Under these circumstances the Union has failed to demonstrate that the information sought herein was relevant to the processing of Young's grievance or was otherwise relevant for collective-bargaining purposes. I therefore shall recommend that this allegation be dismissed.

D. *The Union Requests Respondent To Furnish the Date Employee Betty Green Began Performing Unit Work and the Manner in Which Respondent Transferred Her to a Unit Position*

1. The evidence

In January or February Betty Green's name appeared on the list of bargaining unit employees transmitted each month by Respondent to the Union. Thereafter the Union asked Green to comply with the contractual union-security clause. Green informed the Union she was not obliged to join because she was employed as a temporary employee and was not in the bargaining unit.[3] The Union notified Respondent that Green had not complied with the contractual union-security clause. Union Representative Tenuto was informed by Respondent's employee relations manager, Barthelemy, that Green was employed as a temporary employee, that Green's name was included by error among the names of unit employees, transmitted to the Union, and explained to Tenuto how the error had occurred. Barthelemy admitted that Green's employment appeared to be going beyond the 4-month period of a temporary worker and, when Tenuto stated that unit employees had reported Green was performing unit work, Barthelemy stated he would make further inquiries into the question of Green's status.[4]

On July 17 Barthelemy advised Tenuto that Green was now employed in the bargaining unit as an animal care assistant III. On August 11 Tenuto wrote Barthelemy as follows:

> At the University/Union Relations Committee meeting of July 17, 1980 you informed the Union that Bette [sic] Greene [sic] was now an Animal Care Assitant III effective July 3, 1980 and, therefore, within the TMS bargaining unit:
>
> This information leaves unanswered two critical questions: (1) *how* did Ms. Greene [sic] become a bargaining unit member? and, (2) when did Ms. Greene [sic] begin doing bargaining unit work? In order to enforce the union security provisions of the Agreement it is essential that we have these questions answered.

In the middle of September Tenuto phoned Barthelemy and asked why there had been no answer to Tenuto's August 11 letter. Barthelemy indicated he had been busy with other matters. In reply to the questions posed by Tenuto in the aforesaid letter, Barthelemy at that time told Tenuto that Green's bargaining unit position had been posted and gave Tenuto the requisition number and the dates of the posting. With respect to the date Green began doing unit work, Barthelemy told Tenuto that "[Green] began doing bargaining unit work on July or shortly before." Tenuto disputed this, stating the Union's information indicated she had been performing unit work prior to that time. Barthelemy replied that Respondent's position was that Green "became a member of the unit effective July 1." Tenuto stated the Union did not want to know the date of Green's classification determination, but wanted to know the date "the work began to be performed." Barthelemy replied that Green was performing unit work on July 1.

2. Discussion and ultimate findings

The record establishes that in September, as described in detail *supra*, Employee Relations Manager Barthelemy furnished Union Representative Tenuto with the information about Green which was requested in Tenuto's August 11 letter. In view of this, assuming Respondent was obligated by the Act to furnish the information, I shall recommend that this allegation of the complaint be dismissed in its entirety.[5]

---

[3] Employees who work less than 4 months are classified as temporary employees and are not covered by the Union's contract with Respondent.

[4] The finding that Barthelemy told Tenuto that Green's name was included by error in the monthly list of unit employees and explained how the error had occurred is based upon Barthelemy's testimony. Tenuto did not unequivocally deny Barthelemy's testimony, rather Tenuto testified she did not "recall" such a discussion. Barthelemy on this matter impressed me as a credible witness.

[5] Union Representative Tenuto felt that the information furnished by Barthelemy was inaccurate, however, this does not detract from the fact that Respondent furnished the information about Green which was requested by the Union. The complaint does not allege that Respondent violated the Act by furnishing false information to the Union and this issue was not litigated.

E. *The Union Requests Respondent To Furnish it With a Seniority List for the Machinists Employed at its Linear Accelerator Center*

1. The evidence

The machinists employed by Respondent at its Linear Accelerator Center are represented by the Union and covered by the collective-bargining contract. Although most of these machinists work days on the first shift, some work in the evening on the second shift. In October, Respondent laid off all of the machinists employed on the second shift. With respect to the selection of employees for layoff, the portion of the collective-bargaining agreement dealing with the "selection of those to be laid off," in pertinent part provide:

> The University shall designate the work group to be reduced and the number of positions within each classification which must be abolished within the work group so designated. Within the work group and classification designated for reduction, seniority shall govern the order of layoff if skill and ability equal . . . .

Pursuant to the provisions of the collective-bargaining contract, Respondent in September notified the Union of its intent to lay off machinists employed at the Linear Accelerator Center and the names of the machinists selected for layoff.[6] At this time the Union's representative, John Listinsky, spoke to the machinists' superintendent, Stan Butler, and complained to Butler that the Union's records indicated that there were machinists employed on the first shift with less seniority than those who were scheduled for layoff. Listinsky asked if Butler would exchange seniority lists with the Union. Butler refused, explaining to Listinsky that Respondent's employee relations department had told him that the Union already had this information. Shortly after this, Listinsky questioned Butler's superior, Zeiss, about the layoff. Zeiss told him that the entire second shift had been selected for layoff, even though there were less senior machinists employed on the first shift, because for purposes of seniority for a layoff Respondent viewed the machinists employed on the second shift as a separate and distinct work group. Listinsky expressed his disagreement, explaining to Zeiss that the Union took the position that there was no such thing as shift seniority but that in selecting machinists for layoff the seniority of all persons in that classification should have been considered regardless of their workshift and that in view of this the machinists on the second shift with more seniority than those on the first shift should not have been selected for layoff. Zeiss indicated he disagreed with Lintinsky's interpretation of the contract. Lintinsky asked for a copy of the seniority list used by Respondent in selecting the second-shift machinists for layoff. Zeiss refused to furnish this information explaining that the Union already had it.

On October 10 the Union filed a contractual grievance on behalf of four of the five machinists on the second shift who were selected for layoff and who had more seniority than machinists employed on the first shift. On October 17, Respondent's Senior Employee Relations Representative Alonzo Ashley wrote Union Representative Listinsky that the aforesaid grievance was untimely filed. On November 12 Listinsky wrote Douglas Dupen, the director of personnel for Respondent's Linear Accelerator Center, as follows:

> re: Grievance U-79-89 (SLAC Second Shift Machine Shop)
>
> Dear Mr. Dupen:
>
> I am writing to request information in order to properly represent the four workers named in U-79-89.
>
> Mr Al Ashley in his letter of October 17, 1980 did not address at all the merits of the grievance, which are that less senior Lab Mechanicians have been retained at SLAC during a recent layoff. Within ten (10) days of the date of this letter, please provide me with a complete seniority list for all Lab Mechanician III's employed at SLAC with a breakdown of the five machine shops.

There was no response to this letter.

It is undisputed that each month Respondent, pursuant to the terms of the collective-bargaining contract, furnishes to the Union the names of all bargaining unit personnel together with their dates of hire, classification code, and other information.

2. Discussion and ultimate findings

On November 12, the Union in order to properly evaluate its grievance filed on behalf of the four second shift Linear Accelerator Center machinists who claimed they were laid off out of seniority, requested Respondent to furnish it with a seniority list for the machinists employed at Respondent's Linear Accelerator Center. Respondent has refused to furnish such a seniority list taking the position, which it expressed to the Union, that Respondent each month furnishes this information to the Union when Respondent transmits to the Union the names of the machinists together with their dates of hire. I agree with Respondent.

During the time material herein the Union possessed information furnished to it by Respondent which enabled it to conveniently formulate a seniority list of the machinists employed at the Linear Accelerator Center. This information was furnished to the Union pursuant to Respondent's contractual obligation to submit such data. I recognize that there is a serious dispute between Respondent and the Union about the proper use of the seniority list Respondent takes the position that the contract permits it to treat the machinists employed on the second shift as a separate work group for purposes of layoff, whereas the Union takes the position that the work group for layoff purposes consists of all machinists regardless of their workshift. This dispute however does not change the significant fact that the Union was at all times in a position to conveniently formulate a seniority list based upon information furnished to it by Respond-

[6] The contract requires that such notification be given 30 days prior to the layoff.

ent.[7] As a matter of fact Union Representative Listinsky testified that the Union, using the monthly information furnished by Respondent, had compiled a seniority list for the machinists based upon the Union's interpretation of the contract and that the reason the Union wanted to see Respondent's seniority list was to confirm Respondent's verbal assertion that in selecting the machinists for layoff it had treated the second shift as a work group. However, the Union had information in its possession, furnished by Respondent, which enabled the Union to conveniently determine whether Respondent's action conformed to Respondent's assertion.

Based upon the foregoing I find that at all times material herein the Union possessed the information which on November 12 it requested Respondent to furnish and that this information had been furnished to the Union by Respondent pursuant to its contractual obligation.[8] It is for these reasons that I shall recommend that this allegation be dismissed in its entirety.

F. *The Union's Request for the Names, Classifications, and Individual Job Descriptions of Respondent's Life Science Research Assistants*

1. The evidence

Respondent employs a group of workers classified as life science technicians I through IV who are represented by the Union and covered by the Union's collective-bargaining contract. Respondent also employs a group of workers who are classified as life science research assistants who are not represented by the Union. Respondent maintains classification specifications for the life science technician series of classifications and for the life science research assistant series of classifications. These classification specifications "specify in general terms the characteristic tasks, responsibilities, and qualifications of the jobs so classified [but] do not set forth all the duties, responsibilities, or qualifications for individual jobs so classified." The classification specification for the life science technician series is more than 10 years old and the one for the life science research assistant series is over 5 years old. In addition to the aforesaid classification specifications, Respondent also maintains written job descriptions for each worker's job, including the workers classified as life science research technicians and life science research assistants. An employee's job description describes "in general terms" the following:

> The characteristic tasks and their frequencies; special skills, knowledge or training required, including tools or equipment used; functional relationship to other workers and users of the product or service involved; planning, scheduling, assigning or overseeing work of others; level of responsibility including the method and frequency with which work performed is reviewed or priorities set; and unusual working conditions.

Paragraphs 141 through 144 of the current collective-bargaining contract which is effective from September 1, 1979, until August 31, 1982, in pertinent part, provides for the establishment of "job classifications" which it defines as "a collection of individual jobs for which tasks and responsibilities are sufficiently similar to warrant the same pay range" and further provides for "written classification specifications," one of which is for the above-described life science technician series of classifications, and states that such classification specifications shall "specify in general terms the characteristic tasks, responsibilities, and qualifications of the job so classified [but] do not set forth all the duties, responsibilities, or qualifications for individual jobs so classified." Paragraphs 145 through 148 provide in pertinent part that Respondent may alter said specifications, but shall notify the Union at least 10 working days prior to the implementation of the change in the specifications. The aforesaid contract provisions further provide that upon such notification the Union may request review by the "classification committee"[9] and that if the Union requests review the "proposed change" will become effective "as proposed," but if agreement is not reached on said proposed changes within 15 days of the Union's request for discussion then the Union may grieve the matter pursuant to the contractual grievance-arbitration provisions with specific limitations upon the arbitrator's authority not relevant to this case.

Paragraph 159 of the predecessor to the current collective-bargaining contract, which was effective from September 1, 1976, until August 31, 1979, reads as follows:

> Within one (1) year of execution of this Agreement, the University will develop in consultation with the classification committee revised specifications for Physical Science and Engineering Technician (General Electronics, Mechanical and Operations), Levels I, II, III and Specialist and present such revised specifications to the joint classification committee for recommendation concerning content slotting and pay range assistant. Within two (2) years of execution of this Agreement, the University will develop revised specifications for Life Science Technician Level I, II, III, IV and Group Leader II, III and IV and present such revised specifications to the joint classification committee for recommendations concerning content, slotting and pay range assistants. Any continuing disagreements will be dealt with in accordance with III.B.5.d.2. below.

[7] The record establishes that Respondent compiles its seniority lists, in cases by where a layoff is involved, using the same information which it transmits to the Union.

[8] This is not a case where a union is being required to go to a third party, i.e., employees, to secure relevant information. Here the Employer furnished the information. Nor is this a case where the employer has such information available in a more convenient form than the Union. Here the Employer uses the same monthly reports to formulate its seniority lists which are transmitted to the Union. Under the circumstances this is not a situation where the seniority list compiled by the Employer is any more accurate or authoritative than the Union's.

[9] Pars. 131 and 132 of the contract establish a "classsification committee" consisting of three union and three management representatives whose purpose the contract states "shall be to investigate, study and make recommendations on classification specifications" and further provides that "the selection of any classification specifications to be studied by the committee shall be by mutual agreement."

The predecessor agreement at paragraphs 160 through 163 is identical to the current contract insofar as it provides that Respondent may alter said "revised specification," but shall notify the Union at least 10 working days prior to the implementation of the change in the specifications and further provides that upon and that if the Union requests review the "proposed change" will become effective "as proposed," but that if agreement is not reached on said proposed change within 15 days of the Union's request for discussion then the Union may grieve the matter pursuant to the contractual greivance-arbitration provisions with specific limitations upon the arbitrator's authority not relevant to this case.

Although the 1976–79 agreement, as set forth above, provided that the parties develop revised classification specifications for the life science technician series of classifications within 2 years of the execution of that agreement, the classification committee did not meet for this purpose until August 1979. Between August 1979 and November 4, 1980, the classification committee, consisting of an equal number of union and management representatives, met on several occasions for the purpose of drafting revised classification specifications for the life science technician series of classifications. During these meetings the representatives of the Union and Respondent exchanged proposed specifications, without reaching agreement. Respondent's representatives took the position that the Union's proposed specifications did not accurately reflect the work and responsibilities of the life science technicians.

On November 4 at a classification committee meeting Respondent's representative submitted for the Union's consideration a proposed specification for the life science technician series of classifications. Respondent's representatives stated that in their opinion this specification, which Respondent had drafted, accurately reflected the work and responsibilities of the persons employed in the life science technician classifications. In describing the work and responsibilities of the persons classified as life science technicians the Respondent's November 4 proposal distinguished their work and responsibilities from those of the persons classified as life science research assistants, as follows:

> The technician participates in research activities at several levels of skill and responsibility as described below. He/she is not responsible for establishing or determining the general nature of the investigation or the scientific validity of the research results. In contrast, the research assistant, through the application of a thorough understanding of the theory behind the tasks being performed, provides input into the direction of the investigation. The distinction between the life science technician and a laboratory assistant series is in the nature of the tasks performed. The technician typically performs technical procedures relating to research activities; the laboratory assistant may perform a limited amount of simple technical work, but mainly performs support tasks such as media-making, record keeping, and stock control.

Union Representative Tenuto at this meeting questioned the distinction Respondent was making between the work of the life science technicians and the life science research assistants. Respondent's employee relations manager, Barthelemy, replied that he wished that the Union and Respondent could resolve their dispute over the distinction between the work performed by the life science technicians and the life science research assistants.

As of November 4 "a number of" employees had filed grievances contending that persons classified as life science research assistants were performing the work of life science technicians. One of these grievances had been taken to arbitration in April 1980 and the arbitrator ruled that the person who Respondent had classified as a life science research assistant was in fact performing the work of a life science technician.

On November 14, following the meeting of the classification committee, the Union's executive secretary, Baratz, wrote Respondent's director of personnel, Parker, as follows:

> In order to properly administer the current class specifications for the Life Science Technician Series and also to make recommendations on the revised class specifications currently before the joint classification committee, please provide the following information within ten (10) days to the Union:
>
> 1. The names and classification titles of all Life Science Research Assistants currently employed by Stanford University.
> 2. The current individual job descriptions of each of the Life Science Research Assistants employed by the University.

There was no response to this letter, so on December 17 Baratz wrote again to Parker repeating the aforesaid request for information. Later, in December 1980 at a classification committee meeting, Baratz asked Employee Relations Manager Barthelemy if Respondent intended to furnish the job descriptions for the life science research assistants requested by the Union. Baratz stated the Union thought the information was relevant to its role as the bargaining agent of the life science technicians because the Union needed the information to promulgate a classification specification for the life science technicians. Barthelemy answered that Respondent would not provide the requested job descriptions because life science research assistants were not employed in the bargaining unit. Barthelemy offered to provide the Union with the classification specification which Respondent had for the life science research assistants. In this last respect Barthelemy told Baratz: "If you want to write specifications for technicians and want to compare them against life science research assistants, you should use the specifications for research assistants, that is the information that is useful."

On July 31, 1980, Respondent employed 232 life science research assistants and as of July 31, 1981, employed 245 persons in this classification. On July 31, 1980, Respondent employed 125 life science technicians and on July 31, 1981, employed 128 in this classification.

2. Discussion and ultimate findings

Respondent and the Union are currently negotiating a new classification specification for the life science technician series of job classifications. This negotiation, as described in detail *supra*, is taking place pursuant to the terms of the parties' collective-bargaining contract and, although Respondent is free to institute its proposed classification specification unilaterally, the Union has the right to grieve about the matter pursuant to the contractual grievance-arbitration procedure.[10] On November 4 Respondent submitted a proposed classification specification for the life science technicians and in describing the responsibilities and work of the technicians distinguished their responsibilities and work from that of the life science research assistants. The representatives of the Union expressed their disagreement with this distinction. The Union's disagreement was no surprise to the Respondent inasmuch as the Union at that time was processing "a number of grievances" alleging that workers classified as life science research assistants were in fact doing the work of life science technicians.[11] In order to evaluate Respondent's November 4 proposed classification specification for the life science technician series for job classifications so as to determine whether to accept or challenge it, as was its right under the collective-bargaining agreement, the Union requested that Respondent furnish it with the current individual job descriptions for all of the persons classified as life science research assistants. Respondent refused to furnish this information taking the position that such information was not relevant for collective-bargaining purposes because the life science research assistants were not represented by the Union. The complaint alleges that by its refusal to furnish this information Respondent violated Section 8(a)(5) and (1) of the Act. I agree.

The statutory duty to bargain in good faith includes "the general obligation of an employer to provide information that is needed by the bargaining repreaentative [of its employees] for the proper performance of its duties." *N.L.R.B.* v. *Acme Industrial Corp.*, 385 U.S. 432, 435–436 (1967). It is equally clear that "there is a duty on the part of an employer to supply the Union, upon request, with sufficient information to enable the [Union] to understand and intelligently discuss the issues raised in bargaining . . ." since without such information the Union would be unable to properly perform its duties . . . and no meaningful bargaining could take place." *San Diego Newspaper Guild* v. *N.L.R.B.*, 548 F.2d 863, 867 (9th Cir. 1977).[12]

In assessing the relevance of requested information for collective bargaining it is well settled that information needed to substantiate an employer's bargaining position during negotiations is relevant to the union's role as bargaining representative, for it enables the union to meaningfully evaluate the employer's position. *N.L.R.B.* v. *Pacific Grinding Wheel Company*, 572 F.2d 1343, 1348 (9th Cir. 1978). In *Pacific Grinding Wheel* the court applied the Supreme Court's holding in *N.L.R.B.* v. *Truitt Manufacturing Co.*, 351 U.S. 149, 152–153 (1956), where it was stated:

> Good faith bargaining necessarily requires that claims made by either bargainer should be honest claims . . . if . . . an argument is important enough to present in the give and take of bargaining, it is important enough to require some sort of proof of accuracy.[13]

Thus collective bargaining is frustrated and rendered ineffective when an employer presents a claim to the union and then refuses to provide the requested information necessary to substantiate that claim, and an employer violates the Act by refusing to furnish such information. See *N.L.R.B.* v. *Pacific Grinding Wheel Company*, 527 F.2d 1343, 1348 (9th Cir.); *N.L.R.B.* v. *Western Wirebound Box*, 356 F.2d 88, 90–91 (9th Cir.); *Curtiss-Wright Corp.* v. *N.L.R.B.*, 347 F.2d 61, 69–71 (3d Cir.); *Teleprompter Corp.* v. *N.L.R.B.*, 570 F.2d 4, 10–11 (1st Cir.); *General Electric* v. *N.L.R.B.*, 418 F.2d 736, 752 (2d Cir.).

In the instant case in proposing to the Union a classification specification for the life science technician series of job classifications, Respondent asserted and thereby placed in contention the claim that he life science technician's work and responsibilities differed from those of the life science research assistants in certain enumerated ways. Nevertheless, Respondent refused to furnish the Union with the current job descriptions of the workers classified as life science research assistants. I am of the opinion that Respondent, having made its claim regarding the responsibilities and duties of the life science research assistants, was required to supply the individual job descriptions for these workers, as requested by the Union, so that the Union could intelligently evaluate and assess Respondent's assertion.[14] Respondent's obligation to furnish this information was not altered by the fact that the information concerned matters outside the bargaining unit. Respondent itself established the relevancy of such information by its own conduct of interjecting the duties and responsibilities of the life science research assistants in justifying the classification specification for

[10] In view of the terms of the governing collective-bargaining contract pertaining to the development of new classification specifications I reject Respondent's contention that the exchange of proposed classification specifications for the life science technicians by the representatives of the Union and Respondent and their discussion about these proposals does not constitute collective-bargaining negotiations.

[11] In April 1980 one of the above-described grievances had been resolved by an arbitrator in the Union's favor.

[12] "Unless each side has access to information enabling it to discuss intelligently and deal meaningfully with bargainable issues, effective negotiation cannot occur." *Local 13, Detroit Newspaper Printing and Graphic Communications Union* v. *N.L.R.B.*, 598 F.2d 267, 271 (D.C. Cir. 1979) and cases cited therein.

[13] In *Truitt* the Court was considering an employers claim of poverty which prevented it from meeting the union's wage demands. However, the *Truitt* principle is "not limited to cases in which the Company makes an actual plea of poverty, but [applies] to other situations in which the company possesses data 'relevant' to its bargaining position." *N.L.R.B.* v. *Pacific Grinding Company*, 527 F.2d at 1348.

[14] In view of this conclusion I have not considered General Counsel's further contention that the Union was also entitled to the job descriptions herein, "in order to properly administer the current specifications for the life science technician series in the current collective-bargaining agreement since it had many bargaining unit status grievances on file which raised the issue that life science research assistants were actually doing life science technician work."

the life science technicians which it was proposing that the Union accept. See *Curtiss-Wright Corp.* v. *N.L.R.B.*, 347 F.2d 61, 71 (3d Cir.); *Hollywood Brands*, 142 NLRB 304, 315 (1963), enfd. 324 F.2d 956 (9th Cir.); *N.L.R.B.* v. *Rockwell-Standard Corp.*, 410 F.2d 953, 957 (6th Cir.); *K-Mart Corp.*, 242 NLRB 855, 865–866 (1979). As discussed *supra*, the test of a union's need for information is a showing of probability that the desired information is relevant and would be of use to the Union in carrying out its statutory duties and responsibilities. In the circumstances of this case where Respondent in bargaining about the classification specifications for the life science technicians has placed into issue the nature of the work and responsibilities of the life science research assistnats, the job descriptions of the life science research assistants assume probable or potential relevance to the Union's statutory duty to intelligently represent the life science technicians.

I reject Respondent's contention that it has satisfied its obligation to furnish the Union with the requested information by its offer to furnish the Union with the classification specification for the life science research assistant series of classifications. The information requested by the Union, the current job descriptions of the individual life soience research assistants, was the best available information for the Union to use to examine and evaluate the distinction drawn by Respondent between the work and responsibilities of the life science technicians and the life science research assistants. Thus Employee Relations Manager Barthelemy testified that in meeting to draft a new life science technician classification specification to replace the existing one which was 10 years old that the classification committee would "*look at what the people were currently doing* and . . . rewrite the specifications to reflect more accurately and more clearly what the people were doing. (Emphasis supplied.) And, with respect to the current written job descriptions maintained oy Respondent, Barthelemy testified that Respondent maintains a job description for "each individual job that exists in the University" and that the job descriptions are compiled as follows: "the supervisor and the employee at some point in time will write out a description of the employee's work." Barthelemy further testified that an employee's pay range is assigned by taking the employee's job description and comparing it against the appropriate classification specification. Barthelemy's aforesaid testimony establishes that although the classification specification for the life science research assistant series of classifications generally describes the duties and responsibilities of the workers employed in these classifications that the best evidence of what in fact those workers are doing and their responsibilities are their individual job descriptions.[15] This, plus the fact that the current classification specification for the life science research assistant is at least 5 years old and the fact that Respondent has not contended or offered any evidence which establishes that it has a legitimate business reason for refusing to furnish the job descriptions to the Union, has persuaded me that Respondent was obligated to furnish the Union the information requested in the form it was requested.

Based upon the foregoing, I find that by refusing to furnish the Union with the names, classification titles, and current individual job descriptions of each life science research aasistant in its employ, Respondent has violated Section 8(a)(5) and (1) as alleged in the complaint.

G. *The Union's Request for the Names of the Employees Whom Howard Baruz Leads*

1. The evidence

On or about September 12, Respondent notified the Union that in October it intended to lay off employees Guerra and Ramsay, welders employed at the Linear Accelerator Center. They were selected for layoff on the basis of seniority as required by the governing collective-bargaining agreement. A few weeks earlier the least senior welder, Howard Baruz, was reclassified to the position of leader. Guerra and Ramsay believed Baruz should have been selected for layoff and complained to the Union. Union Representative Listinsky spoke to Welding Shop Supervisor Cruikshank and accused the Respondent of trying to protect Baruz, the least senior man in the department, from layoff. Cruikshank denied this and stated that Baruz was not a part of the work group affected by the layoff because he had been reclassified to the position of leader. On September 22, Listinksy, pursuant to the contractual grievance procedure, filed a grievance against Respondent alleging, among other things, that Respondent violated the contract by selecting Guerra and Ramsay for layoff even though they were as qualified as Baruz, a less senior welder who was not being laid off. On November 14, Listinsky wrote Douglas Dupen, the director of personnel for Respondent at the Linear Accelerator Center, that in order to administer the collective-bargaining contract in the processing of this grievance that the Union needed "the names and classifications of the technicians and laboratory mechanicians whom Howard Baruz leads."[16] On December 2, Alonzo Ashley, an employee relations representative for Respondent at the Linear Accelerator Center, wrote Listinsky in response to Listinsky's request for information about the names of the employees that Baruz leads, as follows:

> Secondly, with respect to Howard Baruz, I believe I have previously responded to this request. Mr. Baruz does not have selected workers assigned to him on a continuing basis to lead and direct. On the contrary, the workers will vary depending on the nature and location of the work assignment. In the normal mode of operation where he ia doing welding on transferline construction or other cryogenic work, he is assigned the lead to technicians and one machinist. He then directs them in establishing the

[15] When all of the individual job descriptions of the life science research assistant series of classifications are reviewed it will enable the Union to determine whether in fact Respondent's contention with respect to the distinction between the work of that group of employees and the life science technicians is valid in whole or in part or is completely erroneous.

[16] On December 3, Listinsky wrote to Respondent's director of personnel, Parker, and repeated the Union's request for this information.

> physical layout of the pipe matrix and has the responsibility for the configuration of the weld terminations on the mated pairs. Under his direction, the machinist must make a precise alignment and cut. In the installation mode, he would normally have from three to five technicians assigned to him. He would be expected to install and finish several field-fitted cryo lines each day and plan the movement of the equipment and field of operation in such a way as to facilitate getting the work done in an efficient manner.

Upon receipt of this letter Listinsky went to the work area where Baruz was assigned and personally interviewed the approximately 20 bargaining unit employees who worked in that area. Listinsky testified that not one of them substantiated Respondent's contention that Baruz was performing the work of a leader. Listinsky then spoke to Bernard Lighthouse, the assistant director of personnel for Respondent at the Linear Accelerator Center, and repeated his request for the names of the persons whom Baruz leads. He indicated to Lighthouse that none of the employees who worked in Baruz' department supported Respondent's claim that he was a leader. Lighthouse stated that Baruz' lead function rotated according to the project involved and that depending upon the circumstances Baruz would lead all or none or any number of the approximately 20 persons employed in the shop. Lighthouse explained to Listinsky that because of this it was impossible for Respondent to furnish the Union with a list of the names of the employees whom Baruz led, but that since the Union knew the name of the employees employed in the shop and since Baruz at different times led all of the employees in the shop that the Union knew who Baruz led.

2. Discussion and ultimate findings

In response to the Union's request for the names of the employees led by Baruz, Respondent, as described above, informed the Union that Baruz did not have specific individuals assigned to him but his lead duties rotated among all 20 of the workers employed in the shop, according to the particular project or projects being completed, and that the Union knew the names of the 20 persons. As a matter of fact the Union knew the names of these unit employees and Union Representative Listinsky interviewed them to determine whether Baruz was in fact performing the duties of a lead person.

Based upon the foregoing, I find that Respondent supplied the information requested herein. Although Respondent did not list the names of the 20 employees whom Baruz supposedly led, Respondent clearly defined the group of employees that he led and the Union knew the names of each one of these employees. The Union's complaint about the information furnished by Respondent seems to be that it was not true, that none of the employees who Respondent claimed Baruz was leading supported Respondent's claim. However, the fact that the Union, based upon Listinsky's interviews with the 20 euployees whom Baruz supposedly led, did not believe that Baruz was a leader, does not detract from the fact that Respondent furnished the Union with the information it had requested. I shall therefore recommend that this allegation be dismissed in its entirety.

H. *The Union's Request for the Names and Addresses of the Contractors Performing Welding Services*

1. The evidence

In the summer of 1980 two welders who worked in the Respondent's Linear Accelerator Center welding shop were laid off and in September two more were laid off. In 1979 the welding shop employed approximately 20 employees whereas in August 1981, the date of the hearing in this case, it employed approximately 9.

In September, after being informed that Respondent intended to lay off two of the welders employed in the welding department, Union Representative Listinsky discovered that several employees who were employed by an outside contractor or contractors had been performing welding work for the past year in the Linear Accelerator Center at IR-12.[17] They were not represented by the Union and are referred to as either "job shoppers" or "temporary workers." Listinsky spoke to Bernard Lighthouse, the Linear Accelerator Center's assistant director of personnel, and asked why there were "job shoppers" doing welding work when Respondent was laying off welders. Listinsky told Lighthouse that Respondent should get rid of the "temporary workers" and not lay off the unit employees. Lighthouse denied that there were any "temporary people" doing welding at the Linear Accelerator Center.

On September 22, Listinsky, on behalf of the Union, filed a grievance against Respondent, under the contractual grievance procedure, alleging in pertinent part that Respondent was "working two contract welders in IR-12 while laying off bargaining unit members" and that by engaging in this conduct Respondent violated the contractual work preservation clause.

On November 14, Listinsky wrote Douglas Dupen the Linear Accelerator Center's director of personnel, that in order to properly administer the collective-bargaining contract and the processing of the aforesaid grievance that the Union needed the following information:

> The names and addresses of the contractor or contractors which have been providing welding services to SLAC in the past two years. More specifically, the name and addresses of the contractor responsible for the welding performed in IR-12 during the past six months.

Listinsky, by letter dated December 3, reiterated this request to Respondent's director of personnel, Robert Parker.

Alonzo Ashley, the Linear Accelerator Center's senior employee relations representative, by letter dated December 2, answered Listinsky's request for information, as follows:

---

[17] IR-12 is an area where physics research is being conducted. It is known as the Positron Election Project and involves the construction of a tunnel about 1 mile in circumference. The tunnel was under construction for approximately 4 years and was finished in the summer of 1980

I should like to reply to your letter of November 14, 1980, addressed to Douglas Dupen, requesting additional information on grievances U-79-7, et al.

With respect to your request for information on contractors performing welding services in IR-12 during the past six months to two years, I fail to understand how this information could help you in any way administer the Collective Bargaining Agreement. We both know that a considerable amount of work has been going on at IR-12 and in other areas of the now completed PEP construction project and that none of the workers were employees of SLAC and, therefore, not covered by the Agreement. At the same time, all of the contracts are available for review by you and the public at large. All you have to do is contact our Plant Office Group and make arrangments to look over any specific contract. However, I think you will find that the work to be performed is specified, not the methods to be used. Thus, the need for welding as an activity may not be specified but must be inferred through knowledge of the process. If, on the other hand, you are not referring to the myriad contractors who might have been involved in the construction of IR-12 and any of the sub-systems, but simply our Labor Services Contractor—or what we call our Time and Materials (T&M) work—then this contract is with Hans Stavin of Palo Alto. I believe he has held this contract for at least the past two years.

* * * *

I trust this is what you requested. If you have ANY further questions regarding this matter, please give me a call.

Listinsky testified that he went to the plant group office referred to by Ashley and looked at the contracts, referred to by Ashley, but stopped after an hour because he "could not make heads or tails out of it because It was just job descriptions, specifications and things like that." Listinsky thereafter expressed his dissatisfaction to Assistant Director of Personnel Lighthouse.

Listinsky testified that the information provided him by Respondent was unsatisfactory because the Union wanted to know where the nonunit welders were working on the site, where their work was being directed from, who was supervising their work and the level of welding work that was being performed.

2. Discussion and ultimate findings

The complaint alleges that Respondent violated Section 8(a)(5) and (1) of the Act by refusing to funish the Union, upon request, "the names and addresses of all contractors performing welding work at Respondent's Linear Accelerator Center." As described *supra*, on November 14 the Union asked Respondent to supply the aforesaid information. In response Respondent made available copies of all of the contracts between Respondent and the contractors whose employees performed welding work at Respondent's Linear Accelerator Center during the period of time requested. In other words Respondent complied with the Union's request. I therefore, for this reason, shall recommend that this allegation be dismissed in its entirety.[18]

I. The Union's Request for Information About Temporary Employees and Contractors and Its Request for Information About 111 Named Nonunit Employees

1. The evidence

The bargaining unit employees represented by the Union are employed by Respondent in several facilities spread out over a university campus which covers a large geographical area. During the period of time involved in this case there were between 1,300 and 1,400 employees employed in the bargaining unit who were represented by the Union. There were also two other substantial groups of workers who performed bargaining unit work, but who were not represented by the Union; the employees employed by Respondent classified as temporary employees and the employees employed by contractors pursuant to contracts between Respondent and the contractors. In addition, Respondent employed a group of permanent employees, not represented by the Union, whose job classifications are not covered by the collective-bargaining contract and who are referred to as "exempt" employees.

The use of temporaries and employees employed by contractors to perform unit work is dealt with in paragraphs 2 and 91 through 94 of the collective-bargaining contract. Paragraph 2 provides that an employee becomes a regular staff employee covered by the contract only after said employee works 4 months. Prior to that time an employee is classified as a "temporary" employee, not covered by the contract, even though he or she is doing the identical work being performed by employees covered by the contract. Paragraph 91 of the work preservation clause of the contract provides that where the employment of contractors to do unit work directly results in the layoff of unit employees, Respondent is obligated to require the contractor to offer employment to the laid-off workers. Paragraph 94 of the work preservation clause further restricts the employment of temporaries, contractors, and exempt employees to do unit work; it provides that "work regularly and customarily performed by workers [referring to bargaining unit employees] shall not be performed by individuals not in the bargaining unit to the extent that it directly results in a worker's layoff or removal to a lower classification." Since at least April 1980, representatives of the Union, based upon complaints from members of the bargaining

[18] It was not Respondent's fault that the information requested was not sufficient for the Union's needs. Respondent had no duty to read the Union's mind. All Respondent was obligated to do was to furnish the information requested by the Union. Moreover, assuming *arguendo*, that Union Representative Listinsky, by his conversations with Assistant Director of Personnel Lighthouse placed Respondent on notice that what the Union really wanted was information showing where the nonunit welders were working, where their work was being directed from, who was supervising their work, and the level of the work they performed, Respondent's refusal to furnish this information was not alleged in the complaint to constitute an unfair labor practice and Respondent did not litigate nor was it afforded an opportunity to fairly litigate this matter.

unit, have complained to Respondent's representatives about Respondent's use of exempt and temporary employees and employees of contractors to perform unit work, instead of employees covered by the collective-bargaining agreement, and have accused Respondent of violating the terms of the agreement. Respondent's representatives have taken the position that it was acting perfectly within its right, under the terms of the collective-bargaining contract. In August 1980, the Union's president informed Respondent's representatives that the issue of Respondent's use of nonunit workers to perform bargaining unit work would be the Union's number one priority the next time a contract was negotiated. In addition, the Union's officials consulted with their attorney and were advised to ask Respondent to furnish it with certain information concerning Respondent's use of nonunit workers to do unit work.[19] Accordingly, on October 8 the Union's executive secretary, Michael Baratz, wrote Respondent's director of personnel, Robert Parker, as follows:

> In order to properly administer the collective bargaining Agreement, the Union needs the information which we are requesting below. Please supply the following information within ten days to the Union:
>
> 1. The names, addresses, classifications, and date of hire of all employees performing work covered by our collective bargaining Agreement, including all temporaries or persons who management considers to be temporary.
>
> 2. As to the temporaries, state the date first employed by the University to perform work covered by the Agreement, specifying the date or dates of any employment hiatus.
>
> 3. The name of every firm, corporation or entity which performs work covered by the Agreement as a "contractor" or "subcontractor" in whole or in part directly or indirectly.
>
> In this regard specify the location or locations of such work and provide a copy of the subcontract to the Union.
>
> Failure of the University to provide this information will be construed as an unfair labor practice and appropriate action will be taken. If additional time is necessary to secure the information to comply with this request, please advise in writing.
>
> As you know, there is currently a dispute between the Union and management concerning the erosion of the bargaining unit and the definition of "temporary" employee, "contractor," "subcontractor," and many other areas of the Agreement. This information is specifically necessary to enforce those areas of the Agreement as well as vindicating the Agreement in general.

[19] As Union Representative Tenuto credibly testified, Respondent's lawyer informed the Union's officials, among other things, that the Union needed this information in order to develop contract proposals to deal with the problem of nonunit personnel performing bargaining unit work.

On October 14, Respondent's staff counsel, Priscilla Wheeler, in response to Baratz' October 8 letter, wrote Baratz as follows:

> I write in response to your recent request for information which you assert to be relevant to a "dispute between the Union and Management" concerning, among other things, the definition of temporary employee, contractor and subcontractor under the Agreement. I know of only one matter which arguably concerns any of the items that you enumerate and that is U-79-25, a grievance challenging the use of temporary employees at Tresidder Union.
>
> As you are no doubt aware, a hearing was convened on U-79-25 on October 8, 1980, with a second day scheduled for October 20, 1980. The University at that time will present all information which the arbitrator may deem to be relevant to the issue. I do not feel that any of the information you specify in items 1, 2 or 3 of your letter are relevant.
>
> The University's responsibilities with regard to subcontracting, for example, are set forth in paragraphs 91 and 92 of the current Agreement. This language has remained unchanged through three successive bargaining agreements and defines the parameters of the University's obligation under the Agreement. As you will note, this obligation arises only when subcontracting directly results in the layoff of bargaining unit members. I am not aware of any situation, including the facts raised in U-79-25, where the University has failed to comply with those obligations as they are set forth in the Agreement. In addition, it is simply not feasible to supply the type of information which you specify. Any contracts or agreements, to the extent that they exist in such matters, would comprise a vast amount of material and the copying cost alone would be substantial. Moreover, these materials are not kept in any uniform fashion at either the University or SLAC and the identification of the particular areas where subcontracting has occurred would be a burdensome and lengthy process. In any event, as I have indicated, I do not believe such material to be relevant or necessary to the Union.
>
> If I have misinterpreted in any way the nature of your request, or if there are additional factors which you wish to bring to my attention please do not hesitate to let me know.

The Union did not reply in writing to Wheeler's October 14 letter.

Early in October 1980 when the Union's officials consulted with the Union's lawyer about the complaints of the unit members that nonunit personnel were performing unit work, the lawyer, besides advising them to send Baratz' October 8 letter requesting information about Respondent's use of temporary employees and contractors who perform unit work, also suggested that the Union document each complaint it received about nonunit members doing unit work. Accordingly, beginning in November the Union instructed complainants to fill out a form stating the name of the nonunit employee he or she

observed doing unit work, the area in which the work was being performed, the nonunit person's supervisor, and who was paying the person. Upon receipt of said information the Union in the case of each complaint about nonunit workers performing unit work sent Respondent a form letter, herein referred to as a status letter, which reads as follows:

> [name] is a member of the bargaining unit and is performing work covered by the collective bargaining agreement.
>
> Please advise the Union immediately of this individual's classification and rate of pay. Also include the date this individual commenced such work at any facility of the University.
>
> Please respond in writing within 72 hours.

From November 1980 to the date of the hearing in this case, August 1981, 111 status letters were sent to Respondent by the Union based upon complaints from unit members that 111 named nonbargainlng unit members were doing unit work. The 111 nonunit persons named in these letters, about whom the Union was seeking the requested information, were not covered by the collective-bargaining contract but were either temporary employees, contractors' employees, or exempt employees except in the case of one supervisor employed by Respondent. Respondent answered the first 15 or 20 status letters in the same manner, except in one instance where it informed the Union that the person named was a supervisor, as follows:

> I am responding to your letters of [date] regarding [name of workers referred to in Union's status letters]. Neither the University's payroll or personnel records show these individuals as past or current employees of the University.

Thereafter Respondent stopped answering the Union's status letters. Upon receipt of the answers to its status letters and thereafter when Respondent failed to answer the letters, the Union, in order to protect its right to file timely contractual grievances under the contract's grievance procedure, filed 111 identical grievances, herein called bargaining unit status grievances, which read as follows:

> [name] is performing bargaining unit work. The University has failed to provide the Union information regarding this individual's classification, rate of pay, and date of work was commenced at Stanford University.
>
> The Union also grieves that the University has not supplied the Union with the information necessary to process this grievance.

The bargaining unit status grievances also allege that by engaging in the above conduct Respondent was in violation of the "entire collective bargaining agreement [scope of work, union security, recognition, and . . . all other applicable provisions]." Respondent's answers to these bargaining unit status grievances were identical and read as follows:

> The grievance alleges that the University is in violation of the entire collective bargaining agreement by having [name] perform bargaining unit work.
>
> The University has no record of a regular staff employee named [name].
>
> Since [the Union] represents only regular staff employees of the University as described in Article I,A. your grievance is without merit and none of the provisions of the collective bargaining agreement are applicable.

Later in 1980, after Respondent's refusal to furnish the information requested in Baratz' October 8 letter and subsequent to Respondent's answers to the Union's initial status letters requesting information about the workers named in those letters, the Union's executive secretary, Baratz, at a meeting of the University/Union relations committee, where grievances were being discussed, informed Respondent's representatives, including Employee Relations Manager Barthelemy, that Respondent's use of nonunit employees to perform bargaining unit work was viewed by the Union as a big issue because the Union thought such use of nonunit workers was "deteriorating the bargaining unit" and that without the information previously requested by the Union in Baratz' October 8 letter and in the status letters it was difficult for the Union to intelligently bargain or to intelligently process grievances and administer the collective-bargainlng contract because the Union did not have any idea who the nonunit workers were, where they were working, and the effect their employment was having upon the unit. Baratz also stated that it was difficult for the Union to "come to grip" with the problem posed by the employment of the nonunit workers doing unit work because of Respondent's refusal to furnish the Union with the requested information. Barthelemy replied that Respondent's use of nonunit workers to perform bargaining unit work was in compliance with the collective-bargaining contract and that the Union did not need the requested information. In April 1981, Baratz, at another UURC meeting, repeated his aforesaid remarks. Barthelemy's answer was the same.

Regarding Respondent's use of temporary employees to perform bargaining unit work, the record reveals that before the date of Baratz' October 8, 1980, request for information, the Union had received a substantial number of complaints from unit employees about the employment of temporary employees doing unit work. The employees' primary complaint was that there were too many temporaries doing unit work and that Respondent had a practice of terminating the employment of temporaries a day or two before their fourth month of employment and of reemploying them as temporary employees within a week. The representatives of the Union confronted Respondent's representatives with this allegation and advised Respondent that this conduct, in the Union's view, violated the collective-bargaining contract.

Regarding Respondent's use of contractors to perform bargaining unit work, the record reveals that at the time of the Union's October 8, 1980, request for information that the Union had received numerous complaints from

unit employees that Respondent was contracting out bargaining unit work and that the employees of the contractors were being assigned overtime work which should have been assigned to bargaining unit employees.

The testimony of Union Representative Mary Ann Tenuto establishes that during the time material herein there have been frequent layoffs of bargaining unit employees. In terms of her demeanor Tenuto impressed me as a reliable and sincere witness. Respondent did not present any evidence, documentary or testimonial, to refute Tenuto's testimony and did not cross-examine her on this point. Nor is there sufficient evidence in the record as a whole to discredit Tenuto's uncontradicted testimony. The fact that at the outset of the hearing when Tenuto was asked, "approximately how many people are in this bargaining unit? Am I talking about ten or fifteen people or a hundred people or what? I am not going to hold you to it exactly but give me an approximation?" testified, "It varies between 1,300 and 1,400 at any given time" does not impugn her testimony that there were frequent layoffs of unit employees during the time material to this case.

During the time material herein the Union had filed grievances based upon its belief that Respondent had improperly classified bargaining unit employees as temporary employees thus excluding them from the unit, and had laid off unit employees while at the same time using contractors' employees to do their work.

2. Discussion and ultimate findings

a. *The information about the temporary employees and contractors*

I am of the opinion that the record establishes that the information requested on October 8, 1980 by the Union from Respondent about the temporary employees and contractors who were performing bargaining unit work was information relevant to the Union's collective-bargaining responsibility to administer the current collective-bargaining contract and to formulate bargaining proposals for a new agreement.

Regarding the Union's request that Respondent furnish the names, addresses, classifications, and dates of employment of its employees classified as temporary employees who were performing bargaining unit work, the record establishes that at the time of the Union's request the following circumstances existed: paragraph 2 of the collective-bargaining contract provided in pertinent part that an employee performing unit work became a regular staff employee covered by the contract, rather than a temporary employee, if said employee worked at least 4 months; paragraph 94 restricted Respondent's use of non-unit temporary employees to perform unit work by providing that unit work shall not be performed by individuals not in the unit to the extent that it directly results in a worker's layoff or removal to a lower classification; Respondent employed a substantial number of employees performing unit work classified as temporary employees; there were frequent layoffs of unit employees; unit employees complained to the Union about the number of temporary employees doing unit work and about the fact that some of them had been employed for more than 4 months inasmuch as Respondent terminated their employment a day or two before the fourth month and reemployed them as temporaries within a week after their termination; the Union had filed at least one grievance alleging that Respondent misclassified a unit employee as a temporary employee thus improperly excluding the employee from the bargaining unit; and on a number of occasions the Union accused Respondent of manipulating the temporary employee classification in violation of the contract. These circumstances persuade me that the Union has met its burden of showing that the information that it requested about the temporary employees performing bargaining unit work was relevant to the collective-bargaining responsibility of the Union to administer paragraphs 2 and 94 of the collective-bargaining contract and to enable the Union to negotiate new contract provisions. Without the information it had requested about the employees doing unit work who were classified as temporary employees, the Union was in no position to intelligently decide whether Respondent was violating either paragraph 2 or 94 of the contract, for this information would enable the Union to determine if and to what extent, temporary employees were being employed for more than 4 months as contended by the unit employees and whether unit employees had been laid off despite the fact that there were temporary employees in the same classification performing unit work.[20] In addition, without seeing the information requested, the Union will be in no position to fashion realistic contract proposals pertaining to Respondent's use of temporaries to do unit work or, at the least, to understand and explain to its constituents why, despite their complaints, it is unnecessary to modify the language of the current contract to protect them from the employment of temporaries. For, only upon receipt of the requested information will the Union be able to intelligently evaluate the extent that Respondent employs temporary employees to perform bargaining unit work for more than 4 months by terminating and immediately rehiring them and the extent that the use of temporaries is adversely affecting the employment of unit employees by layoffs or otherwise.

Regarding the Union's request that Respondent furnish it with the names of the contractors performing bargaining unit work, the location in the unit where such work was being performed, and a copy of Respondent's contracts with said contractors, the record establishes that at the time of the Union's request the following circumatances existed: paragraph 91 of the collective-bargaining

[20] Although the information requested may ultimately show that Respondent has not manipulated the temporary employee classification in violation of the contract and that no unit employee has been laid off as a result of the employment of a temporary employee, it does not relieve Respondent of its obligation to furnish the information to the Union. Nor does the fact that an arbitrator may agree with Respondent's contention that par. 2 of the contract allows Respondent to employ a temporary employee for more than 4 months so long as the employee is terminated prior to the fourth month of employment and rehired thereafter, relieve Respondent of its obligation to furnish the requested information. See *N.L.R.B.* v. *Acme Industrial Company*, 385 U.S. 432, 437-438; *N.L.R.B.* v. *Safeway Stores, Inc.*, 622 F.2d 425 (9th Cir. 1980); *N.L.R.B.* v. *Rockwell-Standard Corporation*, 410 F.2d 953, 957 (6th Cir. 1969); and *N.L.R.B.* v. *Davol, Inc.*, 597 F.2d 782, 787 (1st Cir. 1979).

contract provided that where the employment of contractors directly resulted in the layoff of unit employees that Respondent must require the contractor to offer employment to the laid off employees; paragraph 94 restricted the employment of contractors to perform unit work by providing that unit work shall not be performed by individuals not in the unit to the extent that it directly results in a unit worker's layoff or removal to a lower classification, there were a substantial number of contractors' employees performing unit work; there were frequent layoffs of unit employees; there were complaints to the Union by unit employees about the number of contractors' employees doing unit work and that the contractors' employees were being assigned overtime work instead of the unit employees; and the Union filed at least one grievance contending Respondent had laid off employees while continuing to employ contractors' employees to perform the identical work as the laid-off workers. These circumstances persuade me that the Union has met its burden of showing that the information it requested about the contractors who were doing unit work was relevant to the Union's collective-bargaining responsibility to administer paragraphs 91 and 94 of the collective bargaining contract, and to negotiate new contract provisions to replace the existing contractual work preservation provisions as well as to deal with the employees' contention that overtime work was being awarded to contractors' employees instead of to the bargaining unit employees. Without the information it had requested concerning the contractors whose employees were performing bargaining unit work, the Union was in no position to intelligently decide whether or not Respondent violated either paragraphs 91 or 94, or both, of the contract. The information would have enabled the Union to determine whether or not the contractors' employees were performing the same work as the laid-off employees and whether or not they were working in the same work area as the laid-off employees. In addition, without seeing the requested information the Union will obviously be in no position to fashion realistic contract proposals pertaining to the Respondent's use of contractors to perform unit work including the assignment of overtime to contractors' employees rather than to unit employees, or, at the least, to understand and explain to its constituents why the Union feels that the employment of contractors to perform unit work does not warrant the formulation of serious contract proposals at the expense of economic gains in other areas of the contract.

Respondent argues that the refusal to supply the Union with information requested by the Union in its October 8 letter was permissible for three separate reasons: "(1) The Union has not demonstrated the relevance of such information to its representational functions; (2) The Union made no showing of any impact on its unit because of the use of temporaries, other employees or contractors; (3) The Union has waived it right under the provisions of the collective-bargaining agreement to request the information at issue." I shall evaluate each of these defenses separately.

Respondent contends that because all of the information about the temporaries and contractors concerns nonbargaining unit employees, the Union was obligated to appraise Respondent of the relevance of the information and failed to do so. More specifically Respondent argues that the Union was obligated to respond to Respondent's lawyer's October 14 invitation to further explain to Respondent the relevance of the information. I disagree.

The Union's October 8 written request for the information expressly informed Respondent that the Union intended to use the information to "properly administer the collective-bargaining agreement" in connection with the parties' dispute about "the erosion of the bargaining unit and the definition of temporary employee, contractor, subcontractor, and many other areas of the agreement." Thereafter, following Respondent's October 14 refusal to furnish the requested information, the Union's executive secretary, Baratz, explained to Employee Relations Manager Barthelemy at a grievance meeting that the employment of nonbargaining unit workers doing unit work was viewed by the Union as an important issue because the Union thought the use of nonunit workers to do bargaining unit work was "deteriorating" the unit and that without the information the Union had requested that it was difficult for the Union to intelligently bargain or to intelligently administer the existing collective-bargaining contract because the Union did not have any idea of the identity of the nonunit workers who were doing the unit work, where they were working, and the effect of their employment on the bargaining unit.[21] Clearly the Union's October 8 letter requesting the information, coupled with Baratz' further remarks to Barthelemy on the subject, adequately appraised Respondent that the Union intended to use the requested information to administer the current collective-bargaining contract in connection with its contention that Respondent was violating the terms of that contract by employing temporary employees and contracting out unit work to contractors.[22]

I recognize that the Union's October 8 request for the information did not state that the Union intended to use it to formulate contract proposals. However, during the hearing in this case Respondent was specifically made aware that the Union intended to use the requested information in order to formulate contract proposals. It is well settled that a union's explanation of relevance in a case, if shown to be adequate in its own right, is not invalidated by the fact that it was offered after the unfair labor practice charge was filed or the hearing commenced. See *N.L.R.B.* v. *Temple-Eastex, Inc.*, 579 F.2d 932, 936-937 (5th Cir. 1978) (only notice requirement is that basis for relevance be asserted in complaint or hearing and be fully litigated); *N.L.R.B.* v. *Ohio Power Company*, 531 F.2d 1381 (6th Cir. 1976), enfg. 216 NLRB 987, 989-990, fn. 9 (1975), and *Brazos Electric Power Cooperative, Inc., supra*, 241 NLRB 1016, 1018-19 (1979) (notice requirement met where basis for relevance first asserted at hearing); *Standard Oil Co. of California, West-*

[21] In April 1981 Baratz repeated his above remarks to Barthelemy.

[22] In *N.L.R.B.* v. *F. W. Woolworth Company*, 235 F.2d 319, 322 (9th Cir.), reversed on other grounds 352 U.S. 938, the Court stated it is not required that the basis for relevance be "painfully, laboriously, or absolutely demonstrated in detail"; it is required only that "at sometime or someplace some specific relevancy should be asserted . . . whereby . . . the employer ought to know . . . the relevancy of the information to the relationship of the parties."

ern Operations, Inc. v. *N.L.R.B.*, 399 F.2d 639, 642 (7th Cir. 1968) (notice requirement met where basis for relevance first asserted in charge); *International Telephone & Telephone Corporation* v. *N.L.R.B.*, 382 F.2d 366, 371 (3d Cir. 1967), cert. denied 389 U.S. 1039 (notice requirement met where basis for relevance first asserted in writing in charge). See also *N.L.R.B.* v. *F. W. Woolworth Company*, 235 F.2d 319, 322 (9th Cir. 1956), reviewed on other grounds, 352 U.S. 938 (only notice requirement is that "at sometime or someplace some specific relevancy should be asserted"); *N.L.R.B.* v. *Western Wirebound Box Company*, 356 F.2d 88, 92 (9th Cir. 1966) (notice requirement "does not contemplate erection of artificial barriers and resort to patent technicalities to obfuscate the proceedings.") See, also, *Press Democrat Publishing Company* v. *N.L.R.B.*, 629 F.2d 1320 1325, fn. 8 (9th Cir. 1980). In any event the record establishes that the Union's communications to Respondent, in context, would have appraised a reasonably perceptive person that the Union was seeking to use the requested information in order to formulate contract proposals in addition to policing the current contract. Thus, 2 months before the Union requested the information about the nonunit temporaries and contractors, the Union's president had placed Respondent on notice that the issue of Respondent's use of nonunit personnel, including temporary employees and contractors' employees, to perform bargaining unit work would be the Union's number on e priority during the next contract negotiations. And, following Respondent's initial refusal to supply the information, the Union's executive secretary, in explaining to Respondent's officials why the Union needed the information, stated that without the information it was difficult for the Union to bargain intelligently. These circumstances persuade me that Respondent was adequately appraised of the Union's intention to use the information to formulate contract proposals.

The fact that the information about the temporaries and contractors who were doing bargaining unit work was requested 22 months before the current contract was scheduled to terminate is not significant inasmuch as,

> It is not unusual for a union to begin preparing for bargaining well in advance of actual negotiations. A great deal of factual research and opinion seeking are required in order to develop an idea of what proposals to make during negotiations, and reciprocal communications between union members and leadership may go on for months ahead of negotiations for a new contract. See Davey, Contemporary Collective Bargaining, 3d Ed. (1972), 118–123, 128.

Moreover, a contention that Respondent was not obligated to furnish the information for the Union's use in formulating bargaining proposals for a new contract because there uere no negotations scheduled in the immediate future proceeds from the erroneous legal premise that the Union must show, as a precondition of obtaining information, a specific need for the information. See Press Democrat Publishing Company v. *N.L.R.B.*, 629 F.2d 1320, 1325 (9th Cir.) ("the argument that necessity constitutes a separate guideline has been squarely rejected").

Respondent contends that in order to establish the relevance of the information about the nonbargaining unit temporary employees and contractors that the Union must demonstrate that the unit herein was in fact being eroded by the employment of the nonbargaining unit personnel. Respondent further contends that the Union failed to produce "any objective facts which would support its claim of unit erosion." I reject Respondent's contentions for the following reasons.

In determining whether information is relevant to a union's proper performance of its collective-bargaining responsibilities, I need only find a "probability that the desired information [is] relevant, and that it would be of use to the Union in carrying out its statutory duties and responsibilities." *N.L.R.B.* v. *Acme Industrial Company, supra*, 385 U.S. at 437. Accord: *San Diego Newspaper Guild, Local No. 95* v. *N.L.R.B., supra*, 548 F.2d at 867. The standard for determining whether the information is relevant to the Union's bargaining responsibilities—a standard applicable with equal force to information which is requested to enable the Union to enforce existing bargaining contract provisions and to information which is requested to enable the Union to negotiate new bargaining contract provisions—"is a liberal one, much akin to that applied in discovery proceedings. *Local 13, Detroit Newspaper Printing & Graphic Communications Union* v. *N.L.R.B., supra*. Accord: *N.L.R.B.* v. *Acme Industrial Company, supra; San Diego Newspaper Guild, Local No. 95* v. *N.L.R.B., supra*, 548 F.2d at 867. This liberal discovery-type standard is applicable even in cases where a union seeks information about nonbargaining unit personnel, however, as to nonunit information the burden of proof shifts to the Union to show relevance to a bargainable issue. *Press Democrat Publishing Company* v. *N.L.R.B.*, 629 F.2d 1320, 1325 (9th Cir. 1980). The showing by the Union to meet this burden is not exceptionally heavy. As the court stated in *San Diego Newspaper Guild, Local No. 95* v. *N.L.R.B., supra*, 548 F.2d at 868–869 (9th Cir.):

> When [a] union asks for information which is not presumptively relevant, the showing by the union must be more than a mere concoction of some general theory which explains how the information would be useful to the union in determining if the employer has committed some unknown contract violation . . . . Conversely, however, to require an initial, burdensome showing by the union before it can gain access to information which is necessary for it to determine if a violation has occurred defeats the very purpose of the "liberal discovery standard" of relevance which is to be used. Balancing these two conflicting propositions, the solution is to require some initial, but not overwhelming, demonstration by the Union that some violation is or has been taking place.

The determination of relevance "depends on the factual circumstances of each particular case." *San Diego Newspaper Guild, Local No. 95* v. *N.L.R.B., supra*, 548 F.2d at 867.

I am of the opinion that the factual circumstances of this particular case warrants a finding that the Union has made an initial, albeit not an overwhelming, demonstration of relevancy of the information about the nonbargaining unit temporary employees and contractors who were performing bargaining unit work. The governing collective-bargaining contract includes specific provisions which limit the employment of temporary employees who perform bargaining unit work, as follows: The employment of temporary employees to do unit work may not be the cause of the layoff of unit employees and they may not be employed for more than 4 months to do unit work. A contract provision also limits the employment of contractors to do unit work insofar as their employment results in the layoff of unit employees. Respondent employs a substantial number of temporary employees and contractors to do unit work and there have been frequent layoffs of unit employees. The unit employees complained to the Union about the employment of temporaries and contractors doing unit work and also complained that Respondent was using temporary employees to do unit work for more than the 4 months permitted by the contract by discharging the temporaries shortly before the fourth month and immediately rehiring them as temporary employees. The aforesaid circumstances, in their totality, establish that the Union, in exercising its responsibility to protect the interests of the employees in the bargaining unit it represents, was obligated by their complaints to closely scrutinize all of the facts pertinent to the question of whether or not Respondent, in its employment of nonbargaining unit temporaries and contractors, was violating the provisions of the collective-bargaining contract which limited Respondent's conduct in this respect, and to determine whether it was in the interest of the unit employees for the Union to formulate new or additional contract provisions to protect their employment interests. In other words the circumstances herein demonstrate the relevance of the information sought by the Union to the administrative of the current collective-bargaining contract and in order to determine whether the Union should formulate new contract provisions designed to protect the unit employees from the employment of temporaries and contractors doing bargaining unit work. I recognize that the evidence in the Union's possession did not prove that Respondent was in fact violating the above-described contract provisions or that the unit was in fact being adversely affected by the employment of temporaries or contractors who were doing unit work, "however, to require [such] an initial, burdensome showing by the Union before it can gain access to information which is necessary for it to determine if a violation has occurred defeats the very purpose of the 'liberal discovery standard' of relevance which is to be used." *San Diego Newspaper Guild, Local No. 95* v. *N.L.R.B., supra*, 548 F.2d at 868–869 (9th Cir.). And, under the liberal discovery standard of relevance which is to be sued the information herein is relevant even if it substantiates Respondent's position and regardless of the eventual merit of the Union's complaint. See *N.L.R.B.* v. *Acme Industrial Co.*, 385 U.S. 432, 437–438; *N.L.R.B.* v. *Safeway Stores, Inc.*, 622 F.2d 425 (9th Cir.); *N.L.R.B.* v. *Rockwell-Standard Corporation*, 410 F.2d 953, 957 (6th Cir.); and *N.L.R.B.* v. *Davol, Inc.*, 597 F.2d 782, 787 (1st Cir.).

I reject Respondent's contention that "the Union has waived its right under the provisions of the collective-bargaining agreement to request the information" about the temporary employees and contractors.

The Union, by the terms of the collective-bargaining contract, did not grant Respondent the unlimited right to employ temporary employees and contractors to do bargaining unit work. Rather, Respondent agreed that an employee who performed bargaining unit work for 4 months was no longer a temporary employee, but became a regular staff employee covered by the contract and that the employment of temporaries and contractors to do unit work could not result in the layoff of unit employees. Clearly, the Union had the right to request relevant information from Respondent in order to police these contractual provisions, unless the Union otherwise waived its right to such information by a contractual provision dealing with the furnishing of information.[23] In any event, even if the collective-bargaining contract granted Respondent the unlimited right to use temporary employees and contractors to perform bargaining unit work, the Union, under the circumstances of this case as described *supra*, was entitled to the information so that it could prepare for future negotiations. See *N.L.R.B.* v. *Devol, Inc.*, 597 F.2d 782, 789 (1st Cir.). See also *General Motors Corp.*, 243 NLRB 186, 198–199.

b. *The information about the 111 named nonunit employees*

In November 1980, because of complaints from bargaining unit employees about nonunit workers doing unit work, the Union instituted a procedure whereby when unit employees observed nonbargaining unit personnel doing unit work they would give the Union certain information, including the name of the nonunit person observed doing the unit work. Between November 1980 and August 18, 1981, the date of the hearing in this case, the Union using this procedure received notification of the names of 111 different nonbargaining unit workers who were observed performing unit work. Upon receipt of each name the Union immediately wrote one of the status letters, described *supra*, in which it named the nonunit person who had been observed doing the unit work and asked Respondent for that person's job classification, rate of pay and the date he or she began working in that classification. Respondent's answer to the first 15 or 20

[23] Although a union may contractually relinquish statutory bargaining rights, "such a relinquishment must be in clear and unmistakable language." *Timken Roller Bearing Co.* v. *N.L.R.B.*, 325 F.2d 746, 751 (6th Cir.). Here, pars. 78 and 79 of the contract describes certain information about unit employees which Respondent is required to supply to the Union and further provides that "the Union may request additional data which the University shall provide to the extent relevant and necessary to the Union's representation responsibilities under this agreement." This language does not constitute a clear and unmistakable waiver by the Union of its statutory right to the information involved in this case. Viewed most favorably to Respondent this language merely incorporates into the agreement the Union's statutory right to the information. In any event, such language does not have any bearing on the Union's statutory right to information for the purpose of preparing for future contract negotiations.

status letters were identical, except for one;[24] Respondent answered that its records did not show that the worker named in the status letter was in its employ. Respondent did not answer the remaining 90-plus status letters. In order to comply with the contractual grievance procedures limitation period, the Union filed separate grievances immediately upon receipt of Respondent's answers to the status letters. And, in the 90-plus instances where there were no answers, the Union likewise filed grievances for the same reason. These grievances were worded in identical terms. They named the nonunit worker who had been observed performing bargaining unit work and alleged that "[person named] is performing bargaining unit work" in violation of the collective-bargaining contract, and further alleged that Respondent had failed to provide the Union with the information about said person requested in the status letter. Respondent filed identical answers to these grievances. These answers stated, among other things, that "the University has no record of a regular staff employee named [name]."

Respondent's employee relations manager, Barthelemy, the management official responsible for Respondent's reply or nonreply to the request for information contained in the status letters, testified that he interpreted the 111 status letters as asking for information about employees who were members of the bargaining unit and not for information about persons who were not members of the unit. I reject his testimony. If the language contained in the status letters which state, "[name] is a member of the bargaining unit," was all there is to consider, I might be inclined to credit Barthelemy's testimony, even though in terms of demeanor he did not impress me as a credible witness when he gave this testimony. But, when the status letters are viewed in context it is clear that Barthelemy's testimony is inherently implausible and that Respondent's representatives, including Barthelemy, knew that the Union was taking the position that the 111 persons named in the 111 status letters were not members of the bargaining unit and were performing bargaining unit work despite said nonmembership in the unit. Thus, each of the 111 grievances associated with the status letters which were filed by the Union right after the status letters were written allege that Respondent violated the collective-bargaining contract because, "[name of person named in status letter] is performing bargaining unit work," and that the University had refused to furnish the information about this person requested in the status letter. In addition, late in 1980 the Union's executive secretary, at a grievance meeting, in the context of complaining to Barthelemy about Respondent's use of nonunit workers to do unit work, protested about Respondent's refusal to supply the Union with the information it had requested in the status letters. These circumstances, plus Barthelemy's poor demeanor, persuade me that Barthelemy knew that the Union was taking the position that the persons referred to in the status letter were performing unit work despite the fact that they were not members of the bargaining unit. I am also persuaded that, at the grievance meeting held late in 1980, by informing Barthelemy that the Union, because of its concern about the number of nonunit workers doing unit work, intended to use the information requested in the status letters to intelligently bargain and to intelligently administer the current contract, Baratz appraised Respondent of the Union's intent to use the information to formulate contract proposals and to police the current contract, thus adequately appraising Respondent of the relevancy of the information.

I am of the opinion the Union has established that the information requested in the status letters about the classification of the nonunit workers who were observed doing unit work, their rates of pay, and the dates they commenced work in that classification, was information relevant to the Union's collective-bargaining responsibility to administer the current contract and to formulate bargaining proposals for a new contract. The nonbargaining unit workers about whom this information was requested were observed performing bargaining unit work during the same period when there were frequent layoffs of members of the bargaining unit. In view of the contract's provision precluding the employment of nonbargaining unit workers which result in the layoff of members of the bargaining unit, the information about the classification of the nonunit workers who were doing unit work and their dates of employment in those classifications was relevant to the Union for the policing of the aforesaid contractual provision and to determine whether or not to formulate more restrictive contract provisions regarding Respondent's use of nonunit personnel to perform bargaining unit work. Also said information, plus the wage rates being paid to the nonunit workers for performing bargaining unit work, was relevant to the processing by the Union of its bargaining status grievances which were based upon the Union's contention that those nonunit members observed performing unit work who are classification as exempt employees should be given an bargaining unit classification and covered by the collective-bargaining contract since they were doing unit work. Even though an arbitrator may conclude that the contract grants Respondent the unlimited right to employ nonunit workers to perform unit work except in the case of a showing of a causal relationship between layoffs of members of the unit and the employment of nonunit workers,[25] and although the information requested may show no employees were laid off as a result of the employment of any one of the nonunit workers about whom the information was requested, Respondent was still obligated to supply the information pursuant to the liberal discovery standard of relevance which governs situations such as this. See *N.L.R.B.* v. *Acme Industrial Co. supra*; *N.L.R.B.* v. *Safeway Stores, Inc., supra*; *N.L.R.B.* v. *Rockwell-Standard Corporation supra*; and *N.L.R.B.* v. *Davol, Inc., supra*. In any event even if the collective-bargaining contract granted Re-

[24] In one instance Respondent informed the Union that the worker named in the status letter was a supervisor and specified the department where he worked.

[25] I note, however, that in the case of a grievance file by the Union in the case of a nonunit worker classified as a life science research assistant, an exempt classification, who was doing unit work, that the Union succeeded in persuading an arbitrator that the nonunit worker had been misclassified by Respondent and should be included in the bargaining unit.

spondent the unlimited right to use nonunit workers to perform bargaining unit work, the Union, under the circumstances of this case as described *supra*, was entitled to the information so that it could prepare for future negotiations. See *N.L.R.B.* v. *Davol, Inc., supra*. See also *General Motors Corp.*, 243 NLRB 186, 198–199.

Upon the basis of the foregoing findings of fact and the entire record, I make the following:

CONCLUSIONS OF LAW

1. The Respondent, Leland Stanford Junior University, is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.
2. Service Employees Local No. 715, Service Employees International Union, AFL–CIO, the Union, is a labor organization within the meaning of Section 2(5) of the Act.
3. The bargaining unit which has been described previously in this Decision and is incorporated in the current collective-bargaining contract between Respondent and the Union is a unit appropriate for purposes of collective bargaining within the meaning of Section 9(b) of the Act.
4. The Union is the exclusive representative of all the employees in the aforesaid unit for the purposes of collective bargaining within the meaning of Section 9(a) of the Act.
5. By refusing to furnish the Union with the names, classification titles, and current individual job descriptions of each life science research assistant in its employ, Respondent has violated Section 8(a)(5) and (1) of the Act.
6. By refusing to furnish the Union with the information about the temporary employees, contractors and subcontractors requested in the Union's October 8, 1980, letter, Respondent has violated Section 8(a)(5) and (1) of the Act.
7. By refusing to furnish the Union with the information requested in the Union's 111 status letters, Respondent has violated Section 8(a)(5) and (1) of the Act.
8. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.
9. Respondent has not otherwise violated the Act.

THE REMEDY

Having found that Respondent has engaged in and is engaging in certain unfair labor practices affecting commerce, I shall recommend that it cease and desist therefrom and take certain affirmative action in order to effectuate the purposes of the Act.[26]

Upon the foregoing findings of fact, conclusions of law, and the entire record, and pursuant to Section 10(c) of the Act, I hereby issue the following recommended:

ORDER[27]

The Respondent, Leland Stanford Junior University, Stanford, California, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Refusing to bargain collectively with Service Employees Local No. 715, Service Employees International Union, AFL–CIO, by refusing to supply relevant information upon request.

(b) In any like or related manner interfering with, restraining, or coercing its employees in the exercise of the rights guaranteed them in Section 7 of the Act.

2. Take the following affirmative action which is necessary to effectuate the policies of the Act:

(a) Furnish, upon request, to Service Employees Local No. 715, Service Employees International Union, AFL–CIO, the names, classification titles, and current individual job descriptions of each life science research assistant in its employ.

(b) Furnish, upon request, to the above-named Union the information about the temporary employees, contractors, and subcontractors sought by the Union in its letter to Respondent dated October 8, 1980.

(c) Furnish, upon request, to the above-named Union the information sought in the 111 status letters sent to Respondent by the Union between November 1980 and August 15, 1981.

(d) Post at its office and place of business, where notices to employees represented by the above Union in the bargaining unit hereinabove noted are customarily posted by Respondent, copies of the attached notice marked "Appendix."[28] Copies of said notice, on forms provided by the Regional Director for Region 32, after being duly signed by Respondent's representative, shall be posted by Respondent immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees, employed in the appropriate bargaining unit, are customarily posted. Reasonable steps shall be taken by Respondent to ensure that said notices are not altered, defaced, or covered by any other material.

(e) Notify the Regional Director for Region 32, in writing within 20 days from the date of this Order, what steps Respondent has taken to comply herewith.

IT IS FURTHER ORDERED that the complaint be, and hereby is, dismissed insofar as it alleges that Respondent violated the Act other than as found herein.

---

[26] In complying with that portion of the Order herein which requires it to furnish certain information to the Union, upon request, Respondent, as provided in par. 79 of the current collective-bargaining contract "may charge a reasonable fee for requests [for information] which require extraordinary processing or staff time."

[27] In the event no exceptions are filed as provided by Sec. 102.46 of the Rules and Regulations of the National Labor Relations Board, the findings, conclusions, and recommended Order herein shall, as provided in Sec. 102.48 of the Rules and Regulations, be adopted by the Board and become its findings, conclusions, and Order, and all objections thereto shall be deemed waived for all purposes.

[28] In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."